



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 201105-0292]

RTID 0648-XR114

Endangered and Threatened Wildlife; 90-Day Finding on a Petition to List the Giant Devil Ray as Threatened or Endangered Under the Endangered Species Act

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of 90-day petition finding.

SUMMARY: We, NMFS, announce a 90-day finding on a petition to list the giant devil ray (*Mobula mobular*) as an endangered or threatened species under the Endangered Species Act (ESA). The petition requests that we list the giant devil ray (*M. mobular*) as a distinct species with a limited range throughout the Mediterranean Sea. Information in our files indicates a recent taxonomic revision that found *M. mobular* and *M. japanica* (spinetail devilray) to be synonymous species (*i.e.*, same taxon described and named more than once independently) with circumglobal distribution in tropical and warm temperate seas. The petition relies on obsolete information to identify the species, and therefore we find that the petition does not present substantial scientific or commercial information indicating that the petitioned action may be warranted.

ADDRESSES: Interested persons may obtain a copy of the petition online at the NMFS website: <https://www.fisheries.noaa.gov/national/endangered-species-conservation/negative-90-day-findings>.

FOR FURTHER INFORMATION CONTACT: Stephania Bolden (727 551-5768) or Lisa Manning (301 427-8466), NMFS Office of Protected Resources, *Stephania.Bolden@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Background

On February 10, 2020, we received a petition from Friends of Animals to list the giant devil ray (*M. mobular*) as a threatened or endangered species throughout its entire range under the ESA. The petition describes the range of the giant devil ray as being limited to the Mediterranean Sea. The petition also requests that critical habitat be designated for the species in Mediterranean waters. The petition is available online (see **ADDRESSES**).

ESA Statutory, Regulatory, and Policy Provisions and Evaluation Framework

Section 4(b)(3)(A) of the ESA of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires, to the maximum extent practicable, that within 90 days of receipt of a petition to list a species as threatened or endangered, the Secretary of Commerce make a finding on whether that petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, and to promptly publish such finding in the **Federal Register** (16 U.S.C. 1533(b)(3)(A)). When we find that substantial scientific or commercial information in a petition indicates that the petitioned action may be warranted (a “positive 90-day finding”), we are required to promptly commence a review of the status of the species concerned, which includes conducting a comprehensive review of the best available scientific and commercial information. In such cases, we conclude the review with a finding as to whether, in fact, the petitioned action is warranted within 12 months of receipt of the petition. Because the finding at the 12-month stage is based on a more thorough review of the available information, as

compared to the narrow scope of review at the 90-day stage, a “may be warranted” finding does not prejudice the outcome of the status review and 12-month finding.

Under the ESA, a listing determination may address a “species,” which is defined to also include subspecies and, for any vertebrate species, any distinct population segment (DPS) that interbreeds when mature (16 U.S.C. 1532(16)). A joint NMFS–U.S. Fish and Wildlife Service (USFWS) policy clarifies the agencies’ interpretation of the phrase “distinct population segment” for the purposes of listing, delisting, and reclassifying a species under the ESA (61 FR 4722; February 7, 1996). A species, subspecies, or DPS is “endangered” if it is in danger of extinction throughout all or a significant portion of its range, and “threatened” if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA sections 3(6) and 3(20), respectively, 16 U.S.C. 1532(6) and (20)). Pursuant to the ESA and our implementing regulations, we determine whether species are threatened or endangered based on any one or a combination of the following five section 4(a)(1) factors: the present or threatened destruction, modification, or curtailment of habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; inadequacy of existing regulatory mechanisms; and any other natural or manmade factors affecting the species’ existence (16 U.S.C. 1533(a)(1), 50 CFR 424.11(c)).

ESA-implementing regulations issued jointly by NMFS and USFWS (50 CFR 424.14(h)(1)(i) define “substantial scientific or commercial information” in the context of reviewing a petition to list, delist, or reclassify a species as credible scientific or commercial information in support of the petition’s claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted. Conclusions drawn in the petition without the support of credible scientific or commercial information will not be considered “substantial

information.” In reaching the initial (90-day) finding on the petition, we will consider the information described in sections 50 CFR 424.14(c), (d), and (g) (if applicable). Our determination as to whether the petition provides substantial scientific or commercial information indicating that the petitioned action may be warranted depends in part on the degree to which the petition includes the following types of information: (1) Information on current population status and trends and estimates of current population sizes and distributions, both in captivity and the wild, if available; (2) identification of the factors under section 4(a)(1) of the ESA that may affect the species and where these factors are acting upon the species; (3) whether and to what extent any or all of the factors alone or in combination identified in section 4(a)(1) of the ESA may cause the species to be an endangered species or threatened species (*i.e.*, the species is currently in danger of extinction or is likely to become so within the foreseeable future), and, if so, how high in magnitude and how imminent the threats to the species and its habitat are; (4) information on adequacy of regulatory protections and effectiveness of conservation activities by States as well as other parties, that have been initiated or that are ongoing, that may protect the species or its habitat; and (5) a complete, balanced representation of the relevant facts, including information that may contradict claims in the petition. See 50 CFR 424.14(d).

We may also consider information readily available at the time the determination is made. We are not required to consider any supporting materials cited by the petitioner if the petitioner does not provide electronic or hard copies, to the extent permitted by U.S. copyright law, or appropriate excerpts or quotations from those materials (*e.g.*, publications, maps, reports, letters from authorities). See 50 CFR 424.14(c)(6).

At the 90-day finding stage, we evaluate the petitioners’ request based upon the information in the petition including its references and the information readily available in our files. We do not conduct additional research, and we do not solicit information

from parties outside the agency to help us in evaluating the petition. We will accept the petitioners' sources and characterizations of the information presented if they appear to be based on accepted scientific principles, unless we have specific information in our files that indicates the petition's information is incorrect, unreliable, obsolete, or otherwise irrelevant to the requested action. Information that is susceptible to more than one interpretation or that is contradicted by other available information will not be dismissed at the 90-day finding stage, so long as it is reliable and a reasonable person would conclude it supports the petitioners' assertions. Conclusive information indicating that the species may meet the ESA's requirements for listing is not required to make a positive 90-day finding. We will not conclude that a lack of specific information alone negates a positive 90-day finding if a reasonable person would conclude that the unknown information itself suggests an extinction risk of concern for the species at issue.

To make a 90-day finding on a petition to list a species, we evaluate whether the petition presents substantial scientific or commercial information indicating that the subject species may be either threatened or endangered, as defined by the ESA. First, we evaluate whether the information presented in the petition, along with the information readily available in our files, indicates that the petitioned entity constitutes a "species" eligible for listing under the ESA. Next, we evaluate whether the information indicates that the species faces an extinction risk that is cause for concern; this may be indicated in information expressly discussing the species' status and trends, or in information describing impacts and threats to the species. We evaluate any information on specific demographic factors pertinent to evaluating extinction risk for the species (*e.g.*, population abundance and trends, productivity, spatial structure, age structure, sex ratio, diversity, current and historical range, habitat integrity or fragmentation), and the potential contribution of identified demographic risks to extinction risk for the species.

We then evaluate the potential links between these demographic risks and the causative impacts and threats identified in section 4(a)(1).

Information presented on impacts or threats should be specific to the species and should reasonably suggest that one or more of these factors may be operative threats that act or have acted on the species to the point that it may warrant protection under the ESA. Broad statements about generalized threats to the species, or identification of factors that could negatively impact a species, do not constitute substantial information indicating that listing may be warranted. We look for information indicating that not only is the particular species exposed to a factor, but that the species may be responding in a negative fashion; then we assess the potential significance of that negative response.

Many petitions identify risk classifications made by non-governmental organizations, such as the International Union for the Conservation of Nature (IUCN), the American Fisheries Society, or NatureServe, as evidence of extinction risk for a species. Risk classifications by other organizations or made under other Federal or state statutes may be informative, but such classification alone may not provide the rationale for a positive 90-day finding under the ESA. For example, as explained by NatureServe, their assessments of a species' conservation status do "not constitute a recommendation by NatureServe for listing under the U.S. Endangered Species Act" because NatureServe assessments "have different criteria, evidence requirements, purposes and taxonomic coverage than government lists of endangered and threatened species, and therefore these two types of lists should not be expected to coincide"

(<https://explorer.natureserve.org/AboutTheData/DataTypes/ConservationStatusCategories>). Additionally, species classifications under IUCN and the ESA are not equivalent; data standards, criteria used to evaluate species, and treatment of uncertainty are also not necessarily the same. Thus, when a petition cites such classifications, we will evaluate the

source of information that the classification is based upon in light of the standards on extinction risk and impacts or threats discussed above.

Analysis of the Petition and Information Readily Available in NMFS Files

As mentioned above, in analyzing the request of the petitioner, we first evaluate whether the information presented in the petition, along with information readily available in our files, indicates that the petitioned entity constitutes a “species” eligible for listing under the ESA.

To evaluate the petition, we first looked at the taxonomic description in the petition that referred to the *M. mobular* by one of its common names, “giant devil ray.” The petition includes a “full taxonomic classification” of the giant devil ray, and identifies *M. mobular* (*Raia mobular* Bonnaterre 1778) within the genus *Mobula*. The petition then asserts there are nine different species of the devil ray and lists them as: giant devil ray (*M. mobular*), lesser Guinean devil ray (*M. rochebrunei*), Chilean devil ray (*M. tarapacana*), pygmy devil ray (*M. eregoodootenkee*), smoothtail Mobula (*M. munkiana*), bentfin devil ray (*M. thurstoni*), spinetail devil ray (*M. japanica*), Atlantic devil ray (*M. hypostoma*), and the shortfin devil ray (*M. kuhlii*). The petition cites the *M. mobular* 2015 IUCN Red List Report (Notarbartolo di Sciara *et al.* 2015) as reference for the taxonomy of the giant devil ray and includes as the source a 12-page document downloaded from the IUCN website (Notarbartolo di Sciara *et al.* 2015; that appears to be downloaded on January 24, 2020). However, this source citation for the taxonomic description provided by the petitioner includes on the first page next to the scientific name of the species the statement: “This concept is no longer recognized.”

The 2019 IUCN Red List Report for *M. mobular* (Marshall *et al.* 2019), which was readily available in our files, describes a 2017 taxonomic revision that combines the individuals previously identified as *M. japanica* with those classified as *M. mobular*. Citing both morphological examination and an increased understanding of molecular

genetics, the 2017 taxonomic revision found *M. japanica* to be a junior synonym to the senior *M. mobular* (White *et al.* 2017 with agreement by Hosegood *et al.* 2018). This taxonomic revision is reflected in the 2019 IUCN Red List Report (Marshall *et al.* 2019), which no longer recognizes *M. japanica* and identifies the range of *M. mobular* as “circumglobal in temperate and tropical waters throughout all oceans.”

Thus, while the petition identifies *M. mobular* as a species separate from *M. japanica*, recent improved knowledge of phylogenetic relationships, available when the petition was submitted to NMFS in 2020, indicates the species is no longer a valid concept. Information in our files, as well as the source citation submitted with the petition (IUCN Red List 2015), clearly indicate the species identified in the petition is based on an obsolete taxonomic classification.

Because we concluded that the petition does not identify a valid species for listing, we do not need to evaluate whether the information in the petition indicates the species may be an endangered or threatened species based on ESA section 4(a)(1) factors. Furthermore, our regulations specify that critical habitat will not be designated within foreign countries or in areas outside the jurisdiction of the United States (50 CFR 424.12(g)). Thus, we conclude that the petition does not meet the requirements outlined in our regulations indicating that the petitioned action may be warranted.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available in our files, we conclude that because of a recent taxonomic revision the species identified in the petition is no longer a valid concept. Therefore, the petition does not present substantial scientific or commercial information indicating the requested actions may be warranted. We note our regulations (50 CFR 424.12(g)) specify that critical habitat will not be designated within foreign countries or in areas outside the jurisdiction of the United States.

References Cited

A complete list of references is available upon request to the NMFS Office of Protected Resources (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: November 10, 2020.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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